

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

NARINDER S. SAMRA,
Plaintiff,
v.
KARNAIL S. JOHAL, *et al.*,
Defendants. }
Case No. C09-0171RSL
ORDER DENYING DEFENDANTS'
MOTION TO STRIKE AND DISMISS
ALLEGATION OF PRIOR DECEIT

This matter comes before the Court on defendants' motion to dismiss or, in the alternative, to strike an allegation contained in plaintiff's complaint. Plaintiff alleges that defendants failed to invest \$140,000 as agreed between the parties and that they intend to exclude plaintiff from any proceeds obtained through the investment. Plaintiff asserts that defendants breached their fiduciary duty, engaged in fraud, converted plaintiff's property, breached their contract, and breached their duty of good faith and fair dealing. In support of his claims, plaintiff alleges that defendants "have a history of committing fraud and deceit and in this instance induced [plaintiff] to invest One Hundred Forty Thousand Dollars (\$140,000) and other funds with no intention of paying [p]laintiff any proceeds received as a result of the sale or transfer of the above[-]mentioned Farnsworth Property." Complaint at ¶ 15.

There is no indication that plaintiff intends to assert a fraud claim based solely on the allegation that defendants had a “history of committing fraud and deceit.” Plaintiff’s fraud

**ORDER DENYING DEFENDANTS'
MOTION TO STRIKE AND DISMISS
ALLEGATION OF PRIOR DECEIT**

1 claim, as stated in the second cause of action, is specifically limited to defendants' conduct
2 regarding the Farnsworth property. Defendants have not shown that the second cause of action
3 is inadequately pled or that dismissal is otherwise appropriate.

4 Defendants argue that the allegation of prior deceit should be stricken under Fed.
5 R. Civ. P. 12(f) because it is irrelevant and prejudicial. Evidence is relevant if it has "any
6 tendency to make the existence of any fact that is of consequence to the determination of the
7 action more probable or less probable than it would be without the evidence." Fed. R. Ev. 401.
8 A reasonable finder of fact could conclude that a person who has historically bent the truth
9 and/or misled business partners in similar circumstances is likely to do so again: in fact, the
10 impact of this evidence can be so great that other rules of evidence narrow the circumstances in
11 which it can be admitted. Evidence of prior bad acts is relevant for purposes of Rule 12(f) even
12 if it is not admissible under Fed. R. Ev. 404 and/or 406.¹ Nor have defendants shown that the
13 allegation is scandalous and therefore subject to striking under Rule 12(f). The generalized
14 allegation of fraud and deceit, while insufficient under the pleading rules, is not reprehensible
15 and will not generate public outrage.

16 For all of the foregoing reasons, defendants' motion to dismiss or strike is
17 DENIED.

18 Dated this 5th day of January, 2010.

19
20 
21 Robert S. Lasnik
22 United States District Judge

23
24 ¹ Defendants' evidentiary objections are premature. Neither the complaint nor evidence of prior
25 bad acts has been offered into evidence for any purpose. The specific context in which evidence
regarding the parties' prior dealings is offered will determine whether the evidence is admissible under
Rules of Evidence 404 and/or 406.

26 ORDER DENYING DEFENDANTS'
MOTION TO STRIKE AND DISMISS
ALLEGATION OF PRIOR DECEIT